IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7803 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RDD RATHI

Versus

CHIEF SECURITY COMMISSIONER

Appearance:

1. Special Civil Application No. 7803 of 1993

MR RK MISHRA for Petitioner No. 1

MR NB THAKKAR for Respondent No. 1-3

MR JC SHETH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/08/2004

ORAL JUDGEMENT

1.0 The original petitioner- Rameshwar Dayal D.Rathi

having expired, his wife being legal heir has challenged the order dated 21-9-1992 passed by the Divl. Security Commissioner,Railway Protection Force, whereby the deceased employee was removed from services which was confirmed in appeal by the Dy. Chief Security Commissioner by his order dated 1st April, 1993.

2.0 Mr. Rana for Mr. R.K.Mishra, learned Counsel appearing for the petitioner submitted that looking to the charges levelled against the deceased employee of abusing his superior, even assuming that the offence is proved, the penalty of removal is disproprotionate to the alleged misconduct, and therefore, the order of removal from service is required to be quashed and set aside.

2.1 Mr. Rana next contended that the petitioner was not in a position to attend the inquiry proceedings on 2nd June, 1991 owing to the fact that the petitioner came to be informed only at about 6 O`clock in the morning of that day whereas the inquiry proceedings was held at 9 O'clock. Accordingly, he contended that the inquiry proceedings was bad in law.

2.1.1 On going through the records, it is clear that the contention raised by the learned Counsel for the petitioner is contrary to the documents on record inasmuch as the petitioner has attended the hearing of the inquiry proceedings on 2nd June, 1992 which fact is established from the document produced at Annexure "C" to the petition.

2.2 Moreover, looking to the charges against the petitioner of misbehaving and abusing his superior and that too in a disciplined force like the Railway Protection Force, such an act cannot be encouraged by the Court and requires to be deprecated.

3.1 I am satisfied from the records of the case that the conclusions arrived at, and the penalty imposed by the authority is just and proper which does not warrant interference by this Court.

4.1 However, considering fact that the widow of the deceased employee(original petitioner) is desirous of making a representation to the concerned authority, I am of the view that it will meet the ends of justice if the widow of the original petitioner is permitted to make a representation within one month from the date of receipt of copy of this order. As and when such representation is made, the authority shall consider her case for family pension in respect of the services rendered by the

deceased employee and decide the same within two months from the date of receipt thereof on the basis of the services rendered by the original petitioner if he is entitled under law.

5.1. Subject to the above observations and directions, the petition fails and is dismissed. Rule is discharged.

(K.S.Jhaveri,J.)

stanley-ksj.